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FOREIGN SERVICE DESPATCH

FROM : AmEmbassy MEXICO, D.F.

464

NO.

October 13, 1961

TO : THE DEPARTMENT OF STATE, WASHINGTON.

DATE

REF : Deptel 967, September 29, 1961

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SUBJECT: Article in Mexico City Newspaper El Universal Regarding Mexico's Claim to a Nine Mile Territorial Sea.

The September 27 edition of the Mexico City newspaper El Universal, which is widely read and respected, carried a staff article by Enrique BASULTO Jaramillo regarding the Mexican Government's claim to a nine mile territorial sea and alleging that recent events in the United States, particularly the Supreme Court decision of May 31, 1960, serve to reinforce the Mexican thesis. This article, the full text of which appears in English translation as Enclosure No. 1 to this despatch, repeats the well-known Mexican arguments in support of their nine mile claim and alleges that Dr. Milton EISENHOWER, brother of the former President, in a recent address made statements which also tend to strengthen the Mexican interpretation of the Treaty of Guadalupe Hidalgo.

Enrique Basulto Jaramillo is considered in the local journalistic community one of Mexico's more able reporters, especially in the economic field. He is forty-one years of age, a graduate of the National University of Mexico, and a long-time employee of the conservative El Universal. Sr. Basulto has travelled in South America, Asia and the United States, having attended important economic conferences at Rio de Janeiro in 1954 and at New Delhi in 1958. He was a leader-grant visitor to the United States in 1954 under USIS auspices.

The article which appeared on September 27 has caused no discernible reaction whatever in Mexico City. To the best of the Embassy's knowledge, it has occasioned no editorial comment nor has it aroused interest in either official or diplomatic circles. An Embassy employee who has known Sr. Basulto for many years spoke with him on October 12 and endeavored discreetly to learn whether the article was prepared on the author's initiative. The piece was government inspired.

POL:EVMcAuliffe/kjl

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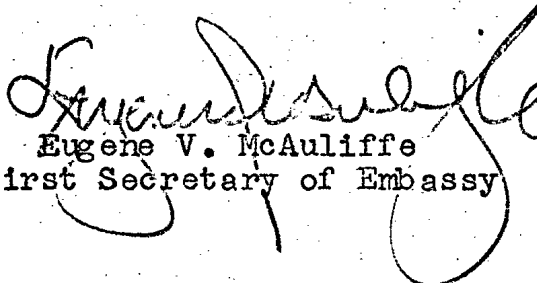
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The views stated by Sr. Basulto are those widely held in the Mexican Foreign Office, even after the departure of Ambassador Alfonso GARCIA Robles for his new post in Brazil, and even among officials who are most friendly disposed toward the United States.

Almost without exception these officials believe: (1) that the United States and the other great maritime powers showed the weakness of their negotiating position when they put forward the "six and six" formula at the Geneva meeting in 1960; (2) that, with the continuing emergence of more new countries in the nationalistic Afro-Asian Bloc and the consequent decline in political power of the United States' European allies, time favors the Mexican nine mile claim; and (3) that the 1960 Supreme Court decision seriously embarrasses the officials of our government since, in a popularly held Mexican view, we always seek to establish a "moral justification" for our actions.

For the Chargé d'Affaires ad interim:


Eugene V. McAuliffe
First Secretary of Embassy

Enclosure: *att*

English Translation of Article from
El Universal, September 27, 1961.

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From Mexico, D.F.

Precedents in the United States Support the Mexican Thesis
of a Nine Mile Territorial Sea

by Enrique Basulto Jaramillo, Editor of El Universal

Firm possibilities point to United States recognition of our sovereignty over a nine mile territorial sea.

This estimate is supported in vigorous legal, moral and political arguments, within the thesis that Mexico has maintained in the international sphere, in its quest for harmony, cooperation and justice.

In addition, important sectors in our neighbor to the North, even the President and prominent members of the House of Representatives and the Senate, along with representatives of private initiative, have been in agreement with the clear position of our country in international affairs.

Moreover, the friendship between the two peoples constitutes a favorable base for the position maintained very clearly by our country since long ago with regard to the extension of the territorial sea.

A controversy studied and decided by the Supreme Court in Washington in the case entitled the United States vs. Louisiana, Texas, Mississippi, Alabama, and Florida, that is, between the Union and the northamerican States bordering on the Gulf of Mexico, reveals the possibilities which we referred to above, so that the United States may recognize our sovereignty over a territorial sea of nine miles.

We must point out that, in the case which we have cited, the Court in the neighboring country refrained from the international aspects, which is understandable in that the issue being decided was one of domestic law between the Union and its various entities; nevertheless, in legal affairs, just as in the moral and political spheres, one cannot maintain one interpretation in the domestic realm and another in the international.

This estimate not only has permanent legal force, but even in the United States itself Dr. Milton Eisenhower stated in this respect that the Treaty of Guadalupe Hidalgo, which ended our unfortunate war with the United States, cannot and should not have one interpretation domestically and another internationally. In a speech delivered by this illustrious U.S. citizen a few months ago he said what we have pointed out above.

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Precedents

In 1935 Dr. Antonio Carrillo Flores and Doctor Manuel J. Sierra, distinguished Mexicans who at present occupy the posts of Mexican Ambassador to the United States and Official Mayor of the Finance Ministry, but at that time as a member of the American Conciliation Group and a judge of the International Court of Justice at The Hague, drafted the amendment of the Law of Real Property of December 18, 1902 to establish that the Mexican territorial seas would have an extension of nine nautical miles.

This draft was prepared under the instructions of the then Finance Minister, Sr. Eduardo Suarez, and was based on the fact that the Treaty of Guadalupe Hidalgo in establishing the new boundary line stated that this (line) would commence three leagues east of the mouth of the Rio Bravo.

This Treaty is for us the source of International Law and by its terms authorizes us to claim the modern equivalent of the antique three leagues, in compliance with Article 27 of the Constitution of 1917 which states that the extension of the territorial sea "shall be that which International Law may fix."

The Situation

For more than 25 years the Government of the United States has refused to accept our interpretation of the Treaty, and, for that very reason, the decision handed down by the Supreme Court on May 31, 1960 with respect to the case referred to above, has very great importance.

Legal Bases

Of special interest to us are: Note No. 106 which speaks of "the rights created between it (Mexico) and the United States by the Treaty of Guadalupe Hidalgo", and the paragraph on page 60 of the provisional edition of the verdict, in which the Supreme Court, after having referred to the different interpretations and theses maintained by the Department of State subsequent to the signing of the Treaty to deny that there was accepted in it a territorial sea of three leagues in the Gulf of Mexico, states:

"It appears evident from the uncertain and shifting character of the grounds on which such statements are based that these reflect nothing more than a posteriori efforts to limit the efficacy of a provision, the intent of which was patently to establish a territorial frontier of three leagues.

"By these endeavors there were attempts to bring the provision into agreement with this country's international obligations."

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It is unquestionable that the Executive has the right to limit the efficacy that should be given to the provisions of a treaty in relations with other countries; however, when as in this case, the question impinges on the relations between the nation and a State, (relations) created in compliance with a mandate from the Congress, it is the original sense of the Treaty which should govern and the acts of the Executive against another nation cannot affect in any manner the rights of the State, for these are a domestic matter.

"We conclude, therefore, that in compliance with the resolution of annexation of 1845, the maritime frontier of Texas was established for domestic purposes at three leagues from its coast. As is natural, we do not intimate (intimar) any judgment as to the application (efectividad) of this boundary with respect to other nations."

Regarding the word "intimate" which is underscored in the preceding paragraph, we should note that the 1947 edition of the dictionary of the Real Academia Española states that the first meaning of the verb "intimate" is "to declare, to notify, to make a thing known, especially with the authority or force to be obeyed", which corresponds substantially to the verb "to intimate", which was used by the Supreme Court, according to Webster's dictionary.

The Position

Taking into account all of the above and considering also attempts recently undertaken to define the limits of the territorial sea in accordance with a norm acceptable to all countries, we are in a strong position to insist that the United States recognize our sovereignty over a nine mile territorial sea.

(Translation of article which appeared on pages 1 and 6 of the Mexico City newspaper El Universal on September 27, 1961.)

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